RSA 120/2001
BEFORE
THE HON'BLE MR. JUSTICE N. CHAUDHURY

This second appeal has been preferred by defendants challenging the appellate judgment of reversal passed by learned Civil Judge, Nagaon in Title Appeal No.40 of 2000 by judgment dated 13.7.2001 thereby decreeing Title Suit No. 3 of 1996 of the Court of learned Civil Judge, Junior Division, Hojai by setting aside and reversing the trial court's Judgment and decree 7.8 2000 passed therein.

2. The predecessor-in-interest of the respondent herein was one Keshab Chandra Shill. He filed Title Suit No. 3 of 1996 in the court of learned Civil Judge, Junior Division , Hojai at Sankardev Nagar praying for declaration of right, title and interest and injunction claiming that he is the exclusive owner in possession of the suit land on the basis of settlement in his favour vide periodic patta No.629 issued in the year 1984. Defendants do not have any semblance of right, title and interest with respect to the suit but made abortive bid to dispossessed the plaintiff on 7.8.1995. It is the further case of the plaintiff the defendant No.4 surreptitiously got her name mutated in the records of right behind the back of the plaintiff and using such mutation as basic endeavour was made to cloud the title of the Plaintiff over the suit land. On being summoned, the defendant appeared and submitted written statement denying the claim of the plaintiff. Plaintiff came forward with a specific plea that land measuring 1 bigha was allotted in favour of one Kebal Krishna Shill by Government to rehabilitate him as he is a displaced person from erstwhile East Pakistan. One Kebal Krishna Shill @ Kebal Kumar died leaving behind two sons , Devendra and Surendra. Plaintiff is the son of Devendra Kumar Shill whereas Gopal Ch. Shill, Radha Kanta Shill and Bidhan Ch. Shill are the sons of Surendra Kumar Shill. It is the case of the defendants that the land having been allotted to Kebal Krishna Shill @ Kebal Kumar by the Government all the legal heirs who have right, title and interest over the same by inheritance, and as such, issuance of patta in the name of plaintiff is of no consequence. According to the defendants they approached the revenue authority and their names were duly mutated in recognition to their claims. An appeal preferred by the plaintiff against the order of granting mutation also failed. Under such circumstances, the defendants prayed for dismissal of the suit.

3. On the basis of the aforesaid rival contentions of the parties, the learned trial court initially framed Issue Nos. 1 to 8 and subsequently an additional issue being additional issue No.1 was also framed. Both the original issues and the Additional Issue No. 1 are quoted below for ready reference:

1. Is there any cause of action for the suit?
2. Is the suit maintainable in its present form?
3. Is the suit barred by law of limitation?
4. Is the suit barred by the principles of waiver, estoppel and acquiescence?
5. Whether the plaintiff is entitled to get decree as prayed for?
6. What relief, if any, the parties are entitled to?

Additional issue No.1
Whether the plaintiff has been in possession of the suit land described in the schedule of the plaint ?

4. In course of evidence plaintiff examined as many as three witnesses including himself and defendants examined two witnesses. After consideration of the evidence led by the parties both oral and documentary, the trial court by its Judgment and decree dated 7.8.2000 dismissed the suit. Issue No.6 was the principal issue for consideration of the learned trial court which relates to the claim over right, title and interest over the suit land. The trial court laid emphasis

on the pleadings of the defendants that suit land was originally allotted to Kebal Krishna Shill in the process of rehabilitation. Kebal Krishna lived on the suit land with his family members during his life time. Thereafter, in course of settlement and operation without issuing patta in the name of all the legal heirs of Kebal Krishna Govermment issued patta in favour of plaintiff Keshab Ch. Shill. According to the learned trial court suit land is ancestral property of the parties and so the prayer of the plaintiff for declaration of his absolute right, title and interest thereon could not be countenanced. The learned trial court also held that Exhibit-1 periodic patta is not sufficient to establish title of the plaintiff over the land as plaintiff in course of deposition, contradicted himself as to the validity of Exhibit-1. Having found that plaintiff did not acquire exclusive right, title and interest over the suit land because of the reason that the suit property was ancestral property of the parties, the suit was dismissed in entirety.

5. The decree of dismissal passed by the trial court on 7.8.2000 was brought under challenge by plaintiff in the court of learned Civil Judge, Senior Division in Nagaon, Title appeal No. 40 of 2000. The learned Appellate court by its judgment dated 13.7.2001 allowed the appeal by reversing and setting aside the judgment and decree passed by the trial court and further holding that the plaintiff acquired valid right, title and interest to the suit land on the basis of Exhibit-1 patta. It is the finding of the appellate court that while Kebal Krishna Shill was allotted with the land but no settlement was made in his favour during his lifetime or to his sons after he had died. Settlement was made only in the name of Keshab Ch. Shil in course of settlement operation and so allotment could not have conferred any title on Kebal Krishna or his son. After all the land was government land and thus question of inheritance by occupant does not arise. Having so found, the suit of the plaintiff was also decreed while reversing the finding of the learned trial court. It is this appellate judgment which has been brought under the present second appeal.

6. This court while admitting the second appeal on 19.10.2001 framed the substantial question of law :

In the facts and circumstances of the case, when the land was allotted to the grandfather of plaintiff/respondent whether the defendant is debarred from inheriting his share of land only because of subsequent letter of allotment or issuance of patta in the name of plaintiff.

7. I have heard Mr. G.P.Bhowmik, learned counsel for the appellant and Mr. BR Dey, learned senior counsel assisted by Mr.P Sen, learned counsel for the respondent. I have perused the lower court records.

8. The factual matrix of the case has been stated above. It is not in dispute that Kebal Krishna Shill was allotted the suit land by the Government in a bid to rehabilitate him. The allotee lived on the land during his lifetime and died leaving behind his two sons, Debendra and Surendra. Occupation of Devendra and Surendra over the land in question was of authorized nature and consequently no one disturbed their possession. During lifetime of Debendra and Surendra the land was not allotted and was not settled and no patta was issued and admittedly Devendra and Surendra also did not acquire the status of land holder or settlement holder within the meaning of Section 3(g) of The Assam Land and Revenue Regulation. They were mere authorized occupants over the land. Subsequently, in the year 1984 formal settlement was made in favor of the plaintiff and Exhibit-1 patta was issued in his favour.

9. I perused Exhibit-1 which shows that the land was settled with the plaintiff for a period of 16 years w.e.f. 31.3.2000 with revenue of only Rs.6.24 subject to the conditions mentioned in the patta. Thereby the plaintiff, became a land holder within the meaning of Section 3(g) read with Section 8 of the Assam Land and Regulation Act, 1886 (hereinafter as 'Regulation'). Consequent to the acq

uisition of status of land holder, the plaintiff became entitled to rights under Section 9 of the Regulation. Section 9 of the Regulation are quoted below:

9. Right of land -holders: A land holder shall have a permanent, heritable and transferable right of use and occupancy in his land, subject to-

(a) the payment of all revenue, taxes, cesses and rates from time to time legally assessed or imposed in respect of land;

(b) the reservation in favour of the Government of all quarries and of all mines, minerals oils, and of all buried treasure, with full liberty to search fo r an work the same, paying to the land-holder only compensation for the surface damage as estimated by the Deputy Commissioner; and

(c) the special conditions of any engagement into which the land-holder may have entered with the Government.

This means consequent to issuance of Exhibit-1 patta plaintiff has acqui red the status of land holder and thereupon right under Section 9 of the Assam Land and Revenue Regulation as land holder have vested on him.

10. The defendants though claimed that patta could not have been issued in t he name of plaintiff alone and so under the given facts and circumstances it sho uld have been a joint patta of all the legal heirs of Kebal Krishna Shill but no challenge has been made against Exhibit-1 patta in any point of time before app ropriate forum. Rule 26 of the Settlement Rules under Regulation shows that a se ttlement made by an appropriate authority is to be confirmed by Commissioner who also have the power to cancel the patta/lease. However, before doing so Commiss ioner is duty bound to give an opportunity of hearing to the patta holder/lease holder. Admittedly in the case in hand, the defendants have neither filed counte r claim nor have they taken recourse to appropriate procedure for getting the p atta cancelled or settlement set aside. Till settlement and consequential patta (Exhibit-1) remains in force the status of the plaintiff as land holder within t he meaning of Section 3(g) of the Regulation continues to exist and consequentl y the plaintiff continues to remain entitled to rights of the land holder as pr ovided under Section 9 of the Regulation. There is a patta (Exibit-1) evidencing settlement of the suit land in favour of plaintiff giving him status of land ho lder and the suit patta as well as settlement being still in force the plaintiff cannot be denuded of his rights as land holder because of the mandate of Sectio n 9 of the Regulation.

11. The learned first appellate court has rightly arrived at a finding that till the settlement was made in favourr of the plaintiff and patta (Exhibit-1) w as issued, the land remained Government land. Nobody acquired any right, title or interest over the said land even if it could have been proved that there was allotment slip in favour of Kebal Krishna Shill. Acquisition or devolution of ti tle as land holder or settlement holder is prescribed under The Assam Land and Revenue Regulation Act, 1886. Apart from the procedure prescribed under the Regu lation there cannot be any acquisition of right, title and interest. Even if the case of the defendant that Kebal Krishna Shill was original allotee of the land yet it cannot be held by any stretch of mutation that he was land holder in res pect of the land. The right of heritability and transferability flows from Secti on 9 of the Regulation which alone provides that a land holder shall have perman ent, heritable and transferrable right of use and occupation of the and subject to the condition mentioned therein. An allotee does not have a permanent, herit able or transferrable right.

12. Mr. GP Bhowmik, learned counsel for the appellant has failed to point ou t any provision of law in the nature of Section 9 of the Assam Land and Revenue Regulation to show that by mere occupation or on the basis of allotment by Gove rnment either under the Assam Land and Revenue Regulation or under any other pro vision of law or scheme permanent , heritable and transferrable right is conferr ed on an allotee . Once it is held that an alottee does not have permanent , her itable and transferable right, question of right of inheritance cannot legally a

rise. This being the position the sole substantial question of law is to be decided in the affirmative and against the appellant. It is accordingly decided

13. The sole substantial question of law having been found against the appellant, the second appeal is dismissed.

14. No order as to costs. Draw up decree and send down the records.